

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

R.S.A. No.1216 of 2004

Date of Decision:- 15.09.2006

Jaswant Singh

....Appellant.

through
Mr.P.S.Rana, Advocate

vs.

State of Punjab & ors.

....Respondents

through
Mr.G.S.Cheema, Sr.DAG, Punjab
for No.1.
Mr.Aseem Rai, Advocate for
Nos.2 to 4.

CORAM:-HON'BLE MR.JUSTICE SURYA KANT

SURYA KANT, J.

This regular second appeal has been preferred by the plaintiff, whose suit for declaration has been dismissed by both the Courts. In his suit, the plaintiff sought a declaration that the order passed by the defendant-respondent No.4 whereby allotment of a single storey shop site in favour of the plaintiff in the Urban Estate of S.A.S.Nagar, Mohali was resumed, is illegal, null and void and without jurisdiction.

Briefly, the facts are that the appellant, who is a riot affected person, was allotted a single storey shop site by the Punjab Urban Development Authority in accordance with the provisions contained in Punjab Urban Estates (Development and Regulations) Act, 1964. The aforesaid plot was allotted to the appellant on 11.5.1991 for a total price of Rs.2,63000. As per the terms and conditions of the allotment, 25% of the

sale price was deposited by the appellant at the time of allotment whereas the balance 75% was required to be paid by him in three annual instalments with interest at the rate of 7 % per annum. These instalments became due on 11.5.1992, 11.5.1993 and 11.5.1994. As the appellant failed to pay the three instalments, defendant-respondent No.4, namely, the Estate Officer, PUDA at S.A.S.Nagar, Mohali, in exercise of his powers under Section 10 of the Act, resumed the allotted site vide his order dated 19.12.1994. The appellant preferred a statutory appeal before the Additional Chief Administrator, PUDA which was accepted subject to the condition that he shall deposit the entire balance amount within 30 days i.e. by March 10, 1997. The appellant, however, could not deposit the said amount as a result of which the conditional appellate order became inoperative. The appellant thereafter appears to have preferred a revision petition which was, however, dismissed by the revisional authority on 19.8.1997. It was thereafter that he filed the present suit for declaration to the effect that the order of resumption was illegal, null and void as the same was passed without any jurisdiction and was also liable to be set aside being a non-speaking order.

The suit has, however, been dismissed by both the Courts below giving rise to this regular second appeal.

Notice of motion was issued and in response thereto the respondent-authorities have put in appearance.

The solitary contention raised by the appellant before the Courts below as well as before this Court is that prior to 1984, he was living in Uttar Pradesh, however, the 1984 anti-sikhs riots caused heavy losses to him and left with no source of livelihood, he migrated to Punjab and due to financial constraints, he could not deposit the three instalments.

The appellant placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Teri Oat Estates (P) Ltd. vs. U.T., Chandigarh and others 2004 (2) SCC 130, wherein it has been held that where the lessee had defaulted in payment of instalments of premium or interest thereon and if such default/delay was not willful or for dishonest reasons but was occasioned due to situation beyond his control and if the entire amount due was ultimately cleared by him, the drastic power of resumption and forfeiture cannot be resorted to as it shall amount to a disproportionate action.

Learned counsel for the appellant submits that the balance price of Rs.3,16,014/-, as was communicated to the appellant by the respondent-authorities, has already been deposited and accepted by the respondents on 9.9.2004. However, learned counsel for the respondents states that the aforementioned amount was accepted by the respondents without prejudice to their rights in this appeal.

On August 4, 2006, the respondents were directed to determine the balance amount, if any, which the appellant is liable to pay as on that date towards the price of the site allotted to him. In compliance thereto, the respondents informed the appellant that he was still liable to pay a sum of Rs.88,000/-. The appellant has since deposited the said balance amount also on 4.9.2006. Thus, as of now, nothing remains due towards the appellant.

Learned counsel for the respondents also does not dispute that the entire price including interest of the allotted site calculated upto 8th September, 2006 has been paid by the appellant though it is pointed out that there are some 'external development charges' which like all other allottees,

the appellant is also liable to pay. Learned counsel for the appellant does not dispute the said liability and undertakes that as and when the 'external development charges' shall be demanded, the appellant will deposit the same.

In the light of the above-noticed admitted facts, the only substantial question of law left to be determined is as to whether the drastic action of resumption of the allotted site, in the facts and circumstances of the present case, can sustain or not?

The parameters within which answer to the above-noted question is to be traced out, have been laid down by the Apex Court in the case of **Teri Oat Estate (P) Ltd.'s case** (supra). If on facts it is found that the lessee/allottee failed to deposit the instalments and/or defaulted in payment thereof willfully or in a dishonest manner, the competent authority shall be justified to resume the site and forfeit the amount, if any, deposited by him. However, if the default in payment has occurred for the reasons and circumstances beyond the control of the allottee, the order of resumption would warrant interference.

In the case in hand, there is no denial to the fact that the appellant is a victim of 1984 anti-sikh riots. His property and source of livelihood, which he was having in the State of Uttar Pradesh were completely ruined and he had to migrate to the State of Punjab to save his own life as well as of his family members. It must have been a very hard time for the appellant and his family to sustain themselves and then to save for the instalments. It is not the case of the respondent-authorities that the appellant, despite having sufficient means, did not deposit the instalments and/or he wanted the allotment for speculative gains. In the absence of any

such allegation or evidence on record, there can be no other conclusion but to hold that the appellant, having lost his livelihood in the riots, had no means to pay the instalments in time and it was a reason beyond his control. The fact that with the passage of time and on improvement of his financial condition, he has cleared all the arrears along with the interest, also strengthens the conclusion that he had no dishonest intention to delay the payment of instalments.

In the light of this discussion, the question posed above is answered in favour of the appellant. As a consequence thereto the appeal is allowed, the impugned judgments and decrees dated 30.5.2002 and 22.10.2003 respectively passed by the Courts below are set aside. The suit filed by the appellant is accordingly decreed and the order of resumption passed by respondent No.4 whereby the site SSS No.143, Phase-7, SAS Nagar, Mohali was resumed as also all the subsequent proceedings are set aside and the afore-said site is restored in favour of the appellant.

No order as to costs.

September 15, 2006
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(SURYA KANT)
JUDGE